



July 5, 1990

Steven Baer
U.S. Department of Justice
Washington, D.C. 30530

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Re: Colbert Landfill, Spokane, Washington

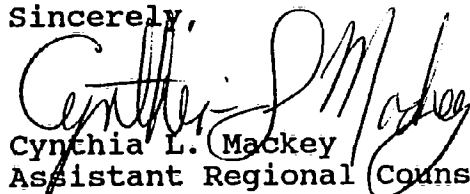
Dear Mr. Baer:

This letter is written to notify you that a Motion For Partial Summary Judgment has been filed in Key Tronics v. U.S. Air Force, Alumax, Schmidt which may impact the enclosed referral to the Department of Justice. Please ensure that the appropriate person reviews the enclosed materials and considers whether it would be appropriate to intervene in the pending litigation.

For your information, a brief chronology of events in Key Tronics v. U.S. Air Force, Alumax, Schmidt and a copy of Key Tronics' Motion for Partial Summary Judgment are enclosed.

Please ensure that the appropriate person contacts me at (FTS) 399-1777 or (206) 442-1777 as soon as possible to discuss this matter. Thank you for your assistance.

Sincerely,


Cynthia L. Mackey
Assistant Regional Counsel

cc: Doug Dixon, OE
Neil Thompson, EPA

USEPA SF



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Chronology of Events

On October 16, 1989, Key Tronics filed a complaint against the United States of America, Donald B. Rice, the Secretary of the United States Air Force, Alumax, and William Schmidt. This suit seeks cost recovery and contribution under CERCLA for costs incurred, including money expended on early studies of the site, money expended on the provision of alternative water and money expended pursuant to its obligations under the Consent Decree.

1. U.S. Air Force

-In December 1989, the U.S. Air Force filed its Answer to the Complaint.

-In June 1990, the U.S. Air Force filed a Motion to Dismiss the Complaint based on the contribution protection provided by the Administrative Order on Consent with U.S. EPA.

-In response to the U.S. Air Force's Motion to Dismiss, Key Tronics has narrowed its claim against the U.S. Air Force to eliminate its claim for money expended pursuant to its obligations under the Consent Decree. This means that Key Tronics claim is limited to the money it expended on studies and on the provision of alternative water. It is questionable whether the contribution protection provided by the Administrative Order on Consent extends to these expenditures. See generally Burlington Northern Railroad v. Time Oil Co., No. C89-913R (W.D. Wash. April 17, 1990); United States v. Hardage, No. 86-1401-P (W.D. Okla. Sept. 22, 1989). Accordingly, U.S. Air Force is considering the possibility of settling this matter.

2. Schmidt's Motion for Summary Judgment

-Schmidt has filed a Motion for Summary Judgment asserting that he is not a potentially responsible party. Schmidt is the individual who ran the machinery at the Colbert Landfill Site. Key Tronics has asserted that he is an operator; whereas Schmidt has asserted that he had no decisionmaking authority. The Department of Justice, in consultation with U.S. EPA, has not responded to this Motion.

3. Motion for Partial Summary Judgment Against Alumax, Schmidt and the U.S. Air Force

-Key Tronics has filed a Motion for Partial Summary Judgment that Alumax, Schmidt and the U.S. Air Force are liable under CERCLA and that Key Tronics is entitled to recover a share of its costs from these defendants. The outcome of this Motion may affect U.S. EPA's proposed action against Alumax, particularly if Alumax responds with a Motion for Summary Judgment/Dismissal that it is not liable under CERCLA.